

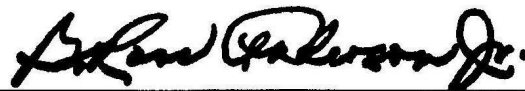


Court.

Petitioner argues that in *In re Exhaustion of State Remedies in Criminal and Postconviction Relief Cases*, 321 S.C. 563 (1990), the South Carolina Supreme Court held that “in all appeals from criminal convictions or postconviction relief matters, a litigant shall not be required to petition for rehearing and certiorari following an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error.” The petitioner may be correct regarding exhaustion for purposes of South Carolina state law, but 28 U.S.C. § 2254(c) requires that a federal habeas petitioner use “any available procedure” in order to exhaust state remedies. Petitioner here could have appealed the PCR dismissal to the state supreme court, so he has failed to exhaust state remedies.

IT IS THEREFORE ORDERED that petitioner’s motion to vacate judgment be DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "G. Ross Anderson, Jr.", is positioned above a horizontal line.

G. ROSS ANDERSON, JR.  
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

January 11, 2007

NOTICE OF RIGHT TO APPEAL

Plaintiff has the right to appeal this Order within thirty (30) days from the date of the entry of this Order, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.